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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,910	02/17/2004	Yi-Ju Chao	I-2-0350.2US	8988
24374	7590	09/18/2007		
VOLPE AND KOENIG, P.C. DEPT. ICC UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER PHAN, MAN U	
			ART UNIT	PAPER NUMBER
			2616	
			MAIL DATE	DELIVERY MODE
			09/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/779,910	Applicant(s) CHAO, YI-JU	
	Examiner Man Phan	Art Unit 2616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The application of Shaffer et al. for a "Time-sensitive-packet jitter and latency minimization on a shared data link" filed 01/27/2004 has been examined. This application is a continuation of 09/614,536 filed 07/11/2000 is now U.S. Patent #6,707,821. The preliminary amendment filed 01/27/2004 has been entered and made of record. Claims 14, 16-19, 32-51 have been canceled, and claims 1, 7, 20, 25 have been amended. Claims 1-13, 15 and 20-31 are pending in the application.

2. The applicant should use this period for response to thoroughly and very closely proof read and review the whole of the application for correct correlation between reference numerals in the textual portion of the Specification and Drawings along with any minor spelling errors, general typographical errors, accuracy, assurance of proper use for Trademarks TM, and other legal symbols @, where required, and clarity of meaning in the Specification, Drawings, and specifically the claims (i.e., provide proper antecedent basis for "the" and "said" within each claim). Minor typographical errors could render a Patent unenforceable and so the applicant is strongly encouraged to aid in this endeavor.

Drawings

3. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted

Art Unit: 2616

by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

4. Related Applications need to be updated.

The disclosure is objected to because of the following informalities: Under "Cross-References to Related Applications" beginning at page 1, line [0003], the continuation application's status needs to be updated. Furthermore, application S/N 10/327,301 filed 12/20/2002 is now US Patent# 6,693,910. Appropriate correction is required.

Double Patenting

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain : patent therefor ..." (Emphasis added). Thus, the term "same invention" in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.

Art Unit: 2616

Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 196%.

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37CFR 3.7309.

7. Claims 1-12 of the present application Serial No. 10/779,910 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,693,910 since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The claims are identical and they are not patentably distinct from each other because the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent, since the patent and the application are claiming common subject matter. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are equivalent in scope and embodiment. The language of the two claims is substantially identical and is equivalent in functioning. All of the structural elements of the patent claims are present in the pending claims, defined with either identical or equivalent

Art Unit: 2616

language. Additionally, the functional language, scope and embodiment reflect identical operation, purpose, application, and environment.

With respect to the specific limitations, claims 1-13 of patent 6,693,910 are equivalent to the pending claims 1-12 of Application 10/779,910 for reducing the latency of the Hybrid Automatic Repeat Request (H-ARQ) reordering buffers within a receiver. Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re Karlson, 136 USPQ 184 (CCPA). Also note Ex parte Rainu, 168 USPQ 375 (Bd. App. 1969); omission of a reference element whose function is not needed would be obvious to one skilled in the art.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The Vayanos et al. (US#6,901,063) is cited to show the data delivery in conjunction with a hybrid automatic retransmission mechanism in CDMA communication systems.

The Tomcik et al. (US#6,567,388) is cited to show the method and apparatus for efficient data retransmission in a voice over data communication system.

The Terry et al. (US#2003/0086391) is cited to show the MAC architecture in wireless communication systems supporting H-ARQ.

The Terry et al. (US#2006/0242529) is cited to show the MAC high speed.

The Ha et al. (US#2003/0202500) is cited to show the apparatus and method for supporting H-ARQ in a high speed wireless packet data communication system.

The Onggosanusi et al. (US#2003/0072285) is cited to show the mimo hybrid-ARQ using basis hopping.

The Kim et al. (US#2003/0007476) is cited to show the apparatus and method for transmitting and receiving data in a CDMA mobile communication system.

The Khan et al. (US#7,200,115) is cited to show the method of managing non-ACK res.

The Iochi (US#2005/0186983) is cited to show the base station apparatus and method for controlling transmission power for retransmitted packets.

The Lee et al. (US#7,234,095) is cited to show the turbo encoded H-ARQ system and error detection method.

The Lee et al. (US#2002/0027956) is cited to show the communication system and method for transmitting signal in the same.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. Phan whose telephone number is (571) 272-3149. The examiner can normally be reached on Mon - Fri from 6:00 to 3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel, can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

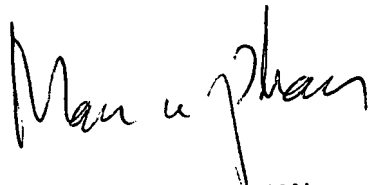
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-2600.

Art Unit: 2616

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at toll free 1-866-217-9197.

Mphan

09/12/2007


MAN U. PHAN
PRIMARY EXAMINER